

SUPREME COURT OF INDIA

Union of India

Vs.

Jitendrasinh M. Parmar

C.A.No.6570 of 1999

(A. K. Mathur and Ashok Bhan JJ.)

02.03.2005

JUDGMENT

A. K. Mathur, J.

1. The Union of India including other defendant-appellants, hereinafter referred to as "the appellants", have filed this appeal against the judgment of a Single Judge of the High Court of Bombay in Second Appeal No. 197 of 1997 dated 21-1-1998 wherein the High Court has dismissed the appeal thereby affirming the judgments and decree passed by the courts below.

2. Shortly stated the facts are:

“The respondent-plaintiffs, hereinafter referred to as "the respondents", filed a suit being Regular Civil Suit No. 30 of 1996 in the Court of Civil Judge, Dadra and Nagar Haveli at Silvassa seeking various reliefs including challenge to Notification No. ADM/LAW/DCF/7-1/8-FD dated 25-2-1988 issued under Section 29 of the *Indian Forest Act, 1927* (for short "the Act"). The respondents prayed for permanent injunction as well as to restrain the appellants herein from implementing, enforcing in any manner the said notification as against the respondents. There was an alternative prayer seeking declaration that the said notification does not apply to the case of the respondents.”

3. The trial court by its judgment dated 10-9-1996 partly decreed the suit. The trial court rejected the prayer sought for by the respondents that notification was illegal and bad in law. The trial court gave a declaration that the notification under challenge was not applicable to the land owned by the respondents admeasuring 93, 127 sq. m. in Survey Nos. 197, 362 to 367 situated at Village Silvassa. It was held that the land not being waste, would not be covered by Section 29. The condition imposed by the Mamlatdar directing the respondents to keep 30 m margin from edge of the kotar (rainwater drain) on the respondents' land by the appellants was declared to be illegal and bad in law. Accordingly, it was quashed and set aside. Permanent injunction was granted in favour of the respondents restraining the

appellants from implementing and enforcing in any manner whatsoever the notification dated 25-2-1988 to the suit land.

4. The appellants, being aggrieved, filed an appeal and the respondents filed their cross-objections. Appeal as well as cross-objections were dismissed and the decree passed by the trial court was affirmed by the first appellate court.

5. Being aggrieved, the appellants filed Second Appeal No. 197 of 1997 in the High Court which has been dismissed by the impugned order.

6. The only point pressed before us is in respect of condition imposed by the Mamlatdar to keep 30 m margin from edge of the kotar. According to the counsel for the appellants in the absence of the plea that such a condition could not be imposed (which according to him the respondents have not pleaded), the High Court and the courts below could not have given the permanent injunction in favour of the respondents restraining the appellants from imposing the condition directing the respondents herein to keep 30 m margin from the edge of the kotar. The High Court has held that such a condition could be imposed by the Collector only in exercise of his powers under Regulation 42 of the Dadra and Nagar Haveli Land Revenue Administration Regulations and not by the Mamlatdar. It may be mentioned that the Collector while granting conversion of land use from agricultural to non-agricultural purpose did not impose the condition that no construction could be put up within 30 m from the edge of the kotar. The Mamlatdar who is subordinate to the Collector could not have imposed such a condition. Counsel for the appellants fairly conceded that the notification under challenge was not applicable to the land of the respondents. He has failed to show with reference to any provisions of statute that the Mamlatdar could also impose such a condition.

7. Under the circumstances, we have no other option but to agree with the findings recorded by the High Court. Accordingly, this appeal is dismissed with no order as to costs.